

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE ACTIQ SALES AND MARKETING
PRACTICES LITIGATION**

Civil Action No. 07-CV-04492 (PBT)

Honorable Petrese B. Tucker

**DECLARATION OF JEREMY A. MENKOWITZ IN OPPOSITION TO PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION**

I, Jeremy Menkowitz, declare, upon personal knowledge and under penalty of perjury, pursuant to 29 U.S.C. § 1746, as follows:

1. I am an attorney with Morgan Lewis & Bockius LLP, counsel for Defendant Cephalon, Inc. ("Cephalon") in the above-captioned case. I make this declaration in support of Cephalon's Memorandum Of Law In Opposition To Plaintiffs' Motion for Class Certification.

2. Exhibits 1, 3-20, 22-26, 28-38, 40, 42-43, 45, 56, and 118-121 are confidential documents filed under seal pursuant to the terms of the Amended Stipulated Protective Order entered in this case. Exhibits 2, 21, 27, 39, 41, 44, 47-55, 57-60, 115-117, 122-123 are non-confidential and thus filed electronically.

3. The following exhibits, attached to this declaration, are true and correct copies of what they are described to be:

Exhibit No.	Description	Filed Under Seal
1	Response and Counter Statement of Cephalon, Inc. to Plaintiffs' Proffer of Facts in Support of Plaintiffs' Motion for Class Certification	X
2	Plaintiffs' First Amended Consolidated Class Action Complaint, dated May 19, 2008	
3	Plaintiffs' List of Actiq Prescriptions for All Pennsylvania Turnpike Commission ("PTC") Participants	X
4	Plaintiffs' List of Actiq Prescriptions for All Indiana Carpenters Welfare Fund ("ICWF") Participants (Ex. 20 to Newman Dep.)	X
5	Excerpts of the deposition transcript of Patricia Schlegel as representative of Plaintiff PTC, dated January 12, 2010 (Ex. 9 to Schlegel Dep.)	X
6	Excerpts of the deposition transcript of R. Irene Newman as representative of Plaintiff ICWF, dated March 26, 2010	X
7	Excerpts of the deposition transcript of Kathleen Knutsen as representative of former Plaintiff EMC Insurance Companies, dated March 23, 2010	X
8	Excerpts of the deposition transcript of Dr. Richard Magill, dated January 26, 2013	X
9	Excerpts of the deposition transcript of Dr. Stuart Hartman, dated January 25, 2013	X
10	Excerpts of the deposition transcript of Dr. Scott Mueller, dated January 17, 2013	X
11	Excerpts of the deposition transcript of Dr. J. Fred Stoner, dated March 6, 2013	X
12	Excerpts of the deposition transcript of Dr. Michael Cozza, Jr., dated March 5, 2013	X
13	Excerpts of the deposition transcript of Dr. James Swonder, dated January 29, 2013	X
14	Excerpts of the deposition transcript of Dr. Lance Washington,	X

	dated January 28, 2013	
15	Excerpts of the deposition transcript of Dr. William Tuley, dated January 23, 2013	X
16	Excerpts of the deposition transcript of Nurse Practitioner Mary Jo Eoff, dated February 25, 2013	X
17	Excerpts of the deposition transcript of Dr. Lynette Green-Mack, dated March 4, 2013	X
18	Excerpts of the deposition transcript of Meredith Rosenthal, dated January 17, 2013	X
19	Declaration of Meredith Rosenthal (Ex. 1 to Rosenthal Dep.), dated October 26, 2012	X
20	Excerpts of the deposition transcript of Deborah Leiderman, dated February 20, 2013	X
21	Declaration of Deborah Leiderman (Ex. 1 to Leiderman Dep.), dated October 26, 2012	
22	Expert report, including all exhibits thereto, of Dr. Michael Ashburn	X
23	Expert report, including all exhibits thereto, of David Bradford	X
24	Expert report, including all exhibits thereto, of Pradeep Chintagunta	X
25	Expert report, including all exhibits thereto, of Christine M. Hammer	X
26	Expert report, including all exhibits thereto, of Dr. Scott Gottlieb	X
27	Actiq Label [CEP_TPP 10022868] (Ex. 11 to Mueller Dep., Ex. 7 to Swonder Dep., Ex. 9 to Hartman Dep., Ex. 3 to Magill Dep.)	
28	Actiq Risk Management Program ("RMP") Letter (Ex. 6 to Hartman Dep., Ex. 4 to Stoner Dep., Ex. 10 to Green-Mack Dep.)	X
29	2002 Actiq Marketing Plan [CEPH-GM-00013241-96, CEP_TPP_EDPA11086162]	X
30	2003 Actiq Marketing Plan [CEPH-CT-MKT-00106679-747, CEP_TPP_CTAG_10568072]	X

31	2004 Actiq Marketing Plan. [CEPH-AP-00000114-72, CEPP_TPP_EDPA10568188]	X
32	2005 Actiq Marketing Plan [CEP_TPP10048144] (Ex. 13 to Rosenthal Dep.)	X
33	<i>Breakthrough Pain: Clinical Manifestations and Treatment Options</i> [CEP_TPP 10015445-6]	X
34	<i>Actiq Attribute Study</i> , Anesta Corporation (June 5, 2000) [CEPH-CT-GEN-00179455-81]	X
35	<i>Actiq Segmentation Study: Qualitative Physician Interviews</i> (Apr. 2004) [CEPH-CT-DW-00195200-245]	X
36	Actiq: Current and Past Prescribers [CEPH-CT-GEN-00180791-902]	X
37	Cephalon's Letter to Elizabeth Fegan dated May 21, 2012	X
38	Excerpts of the deposition transcript of Joseph Caminiti, dated December 16, 2009	X
39	Health Care Financing Administration, <i>HCFA Study of the Pharmaceutical Benefit Management Industry</i> (June 2001)	
40	National Account Manager Reports [CEP_TPP_EDPA10459908-09, CEP_TPP_EDPA10629304-07, CEP_TPP10483340-42, CEP_TPP_CTAG10561887-88, CEP_TPP_EDPA10632068-69]	X
41	Actiq Risk Management Program ("RMP") for 1998 (Doc. No. 302, Ex. 5 to Rosenthal Dep., Ex. 12 to Leiderman)	
42	"Covance September 2006 Activity Report for the ACTIQ® Reimbursement Hotline" [CEP_TPP11199598, CEP_TPP11199612] (Ex. 7 to Rosenthal Dep.)	X
43	Excerpts of deposition transcript of Charles DeWildt, dated December 16, 2009, and Ex. 11 to DeWildt Dep.	X
44	Feldstein, Paul J., <i>Health Policy Issues: An Economic Perspective</i> (5th ed. 2011)	
45	Excerpts of <i>Actiq Patient Chart Study</i> (March 24, 2006) [CEP_TPP 10047335]	X
46	Intentionally Omitted	

47	International Foundation of Employee Benefit Plans, Inc., <i>Health Care Reform: 2012 Employer Actions Update</i> (May 2012)	
48	Anesta Form 10-Q, filed May 31, 1996	
49	Excerpts of the Cephalon Form 10-K405, filed March 30, 2001	
50	Excerpts of the Cephalon Form 10-K405A, filed April 1, 2002	
51	Excerpts of the Cephalon Form 10-K, filed March 31, 2003	
52	Excerpts of Cephalon Form 10-K, filed March 12, 2004	
53	Excerpts of Cephalon Form 10-K, filed March 15, 2005	
54	Excerpts of Cephalon Form 10-K filed February 28, 2007 (Ex. 11 to Rosenthal Dep.)	
55	Excerpts of Cephalon Form 10K405 filed April 1, 2002	
56	Reponses of Defendant, Cephalon, Inc. to Plaintiffs' Notice of Deposition Pursuant to Fed. R. Civ. P. 30(b)(6), dated October 1, 2008 (Ex. 10 to Rosenthal Dep.)	X
57	Center for Drug Evaluation and Research, Approval of Application Number NDA 20-195/S-002 (Fentanyl Oralet) (May 20, 2006)	
58	Model Policy for the Use of Controlled Substances for the Treatment of Pain, Federation of State Medical Boards of the United States (2004) (Ex 8A to Leiderman Dep.)	
59	Virginia Board of Medicine, Model Policy for the Use of Controlled Substances for the Treatment of Pain (2004) (Ex. 9 to Leiderman Dep.)	
60	Medical Board of California, Guidelines for Prescribing Controlled Substances for Pain (2007) (Ex. 10 to Leiderman Dep.)	
61 - 114	Intentionally Omitted	
115	<i>Vono v. State Office of Risk Management</i> , No. 453-04-5346.M5 (Tex. State Office of Admin. Hearings Nov. 5, 2004)	
116	<i>Gordon v. Borough of Bernville/Kline Process Sys. (Pa. Workers' Compensation Office of Adjudication)</i> , Claim No. 2471000 (November 30, 2009) (Ex. 2 to Knutsen Dep.)	

117	Neurontin Revised Package Insert (July 2012)	
118	<i>Medco Clinical Review</i> , Vol. 2 (Nov. 13, 2006) (Ex. 11 to Schlegel Dep.)	X
119	<i>Use of Narcotic Agent, Actiq, Raises Questions</i> , Medco Rx Alert (July 9, 2004) (Ex. 12 to Schlegel Dep.)	X
120	Excerpt from Cephalon's September 2007 Actiq Product Contribution Report [CEP_TPP11984975.xls] (Ex. 9 to Rosenthal Dep.). This was originally produced as an Excel spreadsheet but is being produced in PDF format for the convenience of the Court.	X
121	Cephalon RMP Correspondence identifying Actiq off-label prescribers	X
122	FDA, <i>Guidance For Industry: Good Reprint Practices for the Distribution of Medical Journal Articles and Medical or Scientific Reference Publications on Unapproved New Uses of Approved Drugs and Approved or Cleared Medical Devices</i> (Jan. 13, 2009)	
123	FDA, <i>Guidance for Industry, Development and Use of Risk Minimization Action Plans</i> , Office of New Drugs, effective March 2005	

4. Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 20, 2013.

By:


Jeremy A. Menkowitz

MORGAN, LEWIS & BOCKIUS LLP

1701 Market Street

Philadelphia, PA 19103-2921

Tel.: 215-963-5000

Fax: 215-963-5001

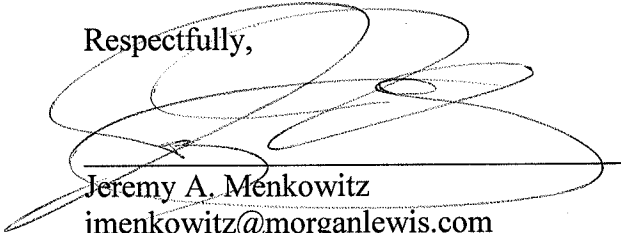
Attorney for Defendant Cephalon, Inc.

CERTIFICATE OF SERVICE

I, Jeremy M. Menkowitz, hereby certify that on March 20, 2013, a true and correct copy of Cephalon's Memorandum Of Law In Opposition To Plaintiffs' Motion For Class Certification, the Declaration of Jeremy Menkowitz in Support of Cephalon's Memorandum Of Law In Opposition To Plaintiffs' Motion For Class Certification, and all exhibits thereto, was served via electronic mail upon all counsel of record.

DATED: March 20, 2013

Respectfully,



Jeremy A. Menkowitz
jmenkowitz@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
Tel.: 215-963-5000
Fax: 215-963-5001